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Chief Administrative Officer

April 11, 2007

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From: David E. Janssen
Chief Administrative Officer

SACRAMENTO UPDATE

State Budget Hearing

Assembly Budget Subcommittee No. 1 on Health and Human Services held a hearing on April 9, 2007 on a variety of mental health issues, including payments owed to counties for federally-mandated Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services provided to children and youth under 21 years of age, and the Governor's Budget proposal to eliminate \$54.9 million for the Integrated Services for Homeless Mentally Ill Program, AB 2034 (Steinberg) of 2000.

EPSDT Program

As reported in our April 4, 2007 Sacramento Update, the County is owed an estimated \$170.2 million for approved prior year claims (\$23.6 million for FY 2004-05 and \$146.6 million for FY 2005-06), and it is anticipated that this amount could be higher once the FY 2006-07 books are closed. Just before the April 9, 2007 hearing, our Sacramento Advocates and a County Department of Mental Health (DMH) representative had a conversation with Dr. Stephen Mayberg, the Director of the State Department of Mental Health (SDMH), who indicated that \$74 million in Federal EPSDT payments is at the State Controller's Office for disbursement to the County. We contacted SDMH, and today they confirmed that the \$74 million disbursement is for FY 2005-06, and should be received within two weeks. As a result, upon receipt of these funds, the amount owed to the County for prior years will be reduced from an estimated \$170.2 million to \$96.2 million.

In addition, the Subcommittee had a lengthy discussion on the late payments for EPSDT services already provided by, and paid for, by counties. Dr. Mayberg indicated that the current and prior year deficiencies are attributed to the misestimating of EPSDT claims and different accounting methodologies used by the State Departments of Mental Health and Health Services.

Assembly Member Patty Berg, the Subcommittee Chair, stated that this problem is a "real mess and that it must be fixed," and indicated that she has heard from many counties inquiring about the status of these late payments. Several groups including a representative from DMH, the County Mental Health Directors Association (CMHDA), the California State Association of Counties (CSAC), the Urban Counties Caucus, and labor, urged Subcommittee members to approve the Administration's deficiency request. The Subcommittee took the following actions: 1) directed SDMH to develop a work plan to address payments to counties, and report back to the subcommittee at future hearings to present the plan, and 2) adopted budget bill language to declare the Legislature's and SDMH's intent to work collaboratively to develop a restructured EPSDT Program for implementation in FY 2008-09, which will include legislation to establish the program in State statute within the 2007-08 legislative session.

Proposed Elimination of the AB 2034 Program

The Subcommittee held open the AB 2034 issue pending the release of the Governor's May Revision. Los Angeles County receives \$17 million annually in AB 2034 funding, and provides intensive mental health services to over 1,600 adults. Numerous advocacy groups, including our Sacramento Advocates, CMHDA, CSAC, and labor, urged subcommittee members to reject the Governor's proposal, and to restore the funding, because this program has proven outcomes in reducing the number of homeless mentally ill, as well as the number of mentally ill clients who might otherwise be housed in county jails.

Pursuit of County Position on Legislation

AB 70 (Jones), as amended on February 21, 2007, would change the way liability related to flood control projects is apportioned between the State and local governments. Specifically, AB 70 would decrease the State's liability by requiring any local public entity to compensate the State for actions contributing, or whose failure to act contributes, to the failure of a flood control project when that failure causes property damage or personal injury and a judgment has been entered against the State. The bill would subject a local public entity to joint liability and the State's right of compensation to the extent that the local public entity increases the amount of property damage sustained in a flood by approving new development in a previously undeveloped area, defined as open space land or land devoted to agricultural use. AB 70, which is a re-introduction of County-opposed AB 1528 (Jones) and AB 3050 (Committee on Judiciary) of 2006, is in response to a court decision (*Paterno v. California*, 2003) which

Judiciary) of 2006, is in response to a court decision (Paterno v. California, 2003) which indicated that the State may be held liable for any failure of Northern California levees even though the State did not initially build them.

The Department of Public Works (DPW) indicates that AB 70 would make the Los Angeles County Flood Control District (LACFCD) and other local flood control districts liable for lack of additional improvements to existing flood control projects for which they are severely short of funds and that LACFCD might unfairly be held liable for damage from failed flood control projects where they have applied to the State for improvement permits and the State will not or has not approved the permits. DPW indicates that the bill could unfairly open the County to liability for flood damage that is caused by the failure of Caltrans flood control improvements that ultimately empty into County flood control projects. DPW recommends that the County oppose AB 70.

County Counsel agrees with DPW's recommendation and points out a number of additional concerns. First, the bill unfairly and inequitably circumvents existing appellate opinions and statutory law in an attempt to shift the risk of liability in flooding cases from the State to local public entities such as the County. Second, AB 70 ignores the well established line of case law that created the rule of reasonableness for flooding and water damage inverse condemnation cases. In applying the reasonableness standard, the courts consider many factors including balancing the public need for flood control projects against the risks and severity of damages sustained by private landowners. In County Counsel's view, the bill creates a double standard because on the one hand, it does not abolish the rule of reasonableness with respect to the underlying case brought by the damaged property owner. Conversely, it seems to apply the general strict liability standard on non-flood damage cases to the State's cause of action against the local public entity, therefore, the State may be able to recover under an indemnity theory from a local public entity while the property owner cannot – under the same facts.

Third, the bill does not define the word "failure." It is not clear as AB 70 refers to any failure, a failure tantamount to negligence, or something different. This vagueness leaves the door open for conflicting interpretations and a lack of clarity as to how local municipalities respond should the bill become law. Finally, the bill places local agencies in a situation in which they will be potentially liable to the State if they approve development, and potentially liable to the subdivider if they reject it.

The Department of Regional Planning (DRP) indicates that if AB 70 becomes law, the County's potential flood damage liability for approving new developments in undeveloped agricultural and open space areas would significantly increase. DRP indicates that AB 70 could cause the County to become involved in many civil cases against the State and incur related legal costs in efforts to negotiate the extent of the County's financial liability. Moreover, County Counsel indicates that this bill would appear to increase the County's liability whether the new development would actually contribute to the malfunction of a flood control facility, or the new development would

simply add to the number of properties that are damaged. DRP recommends that the County oppose AB 70.

Opposition to AB 70 is consistent with existing policy to oppose legislation which increases the County's liability or that would transfer to the County or to its residents any costs or revenue losses incurred by another jurisdiction. Opposition to AB 70 is also consistent with existing policy to oppose AB 1528 and AB 3050 of 2006, both substantially similar bills. **Therefore, our Sacramento advocates will oppose AB 70.**

There is no known support or opposition to AB 70 at this time. However, AB 3050 was supported by the Planning and Conservation League, the Sierra Club, and the State Attorney General, and was opposed by the California Chamber of Commerce, the California League of Cities, and the California State Association of Counties. AB 70 is currently in the Assembly Judiciary Committee awaiting a hearing date.

Status of County-Advocacy Bills

County-supported SB 990 (Kuehl), which would require as a condition for any sale, lease, or sublease, or transfer of any land presently or formerly occupied by the Santa Susana Field Laboratory, also known as Rocketdyne, that the Director of Toxic Substances Control certify that the land has undergone complete remediation, was amended on April 9, 2007 to require that complete remediation conform to specified protective standards. In addition, the amendments would authorize the Department of Toxic Substances Control to compel a responsible party or parties to take or pay for appropriate removal or remediation action necessary to protect public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County. The bill was re-referred to the Senate Environmental Quality Committee.

Master Bill List

A roster containing the status of all bills with a County advocacy position is attached.

We will continue to keep you advised.

DEJ:GK
DW:MR:EW:DS:acn

Attachment

c: All Department Heads
Legislative Strategist
Local 660
Coalition of County Unions
California Contract Cities Association
Independent Cities Association

COUNTY OF LOS ANGELES - CHIEF ADMINISTRATIVE OFFICE
STATUS OF BILLS OF INTEREST TO THE COUNTY
2007-08 LEGISLATIVE SESSION

These are bills we have pursued in Sacramento pursuant to Board actions or as reported in bill policy memoranda.

<u>BILL</u>	<u>AUTHOR</u>	<u>POSITION</u>	<u>SUBJECT</u>	<u>STATUS</u>
AB 81	Torrico	Oppose Unless Amended to delete language that increases the safe surrender time frame from 72 hours to 30 days (State Update: 3/6/07)	Would: 1) raise the age at which a minor child can be surrendered from 72 hours old or younger, to 30 days; 2) allow cities to designate safe surrender sites; 3) designate fire stations with a paramedic or emergency medical technician on duty 24 hours per day as safe surrender sites; 4) specify that persons at a safe surrender site have no liability prior to taking physical custody of a child; 5) appropriate \$5 million to the California Department of Social Services to conduct a statewide awareness campaign to publicize the safe surrender program and establish a toll-free telephone number to provide information regarding safe surrender sites; and 6) allocate \$1 million in competitive grants to county social services agencies that conduct safe surrender outreach activities.	Assembly Appropriations
AB 119	Price	Support (State Update: 3/1/07)	Would require the State to pay for expenses incurred on or after January 1, 2007, for elections proclaimed by the Governor to fill a vacancy in the office of State Senator or member of the Assembly or to fill a vacancy in the office of the United States Senate or Representative in Congress. If an election proclaimed by the Governor is consolidated with a local election, the State would pay only the additional expenses directly related to the election proclaimed by the Governor. Urgency measure.	Assembly Appropriations
AB 166	Bass	Oppose (State Update: 3/21/07)	Would add provisions to the Labor Code that would expand the presumption of job-related injury for public safety employees to include contracting methicillin resistant staphylococcus aureus (MRSA) skin infections.	Assembly Insurance
AB 190	Bass	Support (State Update: 3/23/07)	Would establish a new child welfare budget methodology to implement the caseload relief recommendations of the SB 2030 Child Welfare Workload Study. Also requires counties to develop a plan, in consultation with parents of children receiving child welfare services, consumers, child advocacy organizations and social worker organizations, for the use of additional funds to provide social workers with additional time or support to enhance casework outcomes for children and families.	Assembly Appropriations

<u>BILL</u>	<u>AUTHOR</u>	<u>POSITION</u>	<u>SUBJECT</u>	<u>STATUS</u>
AB 223	Runner	County-sponsored	Would allow those serving in the military, who are called to active duty in the United States on short notice, to be able to cast an absentee/provisional/or faxed ballot allowing those voters to be made a part of the official canvass.	Assembly Appropriations
AB 335	De Leon	Support (State Update: 3/30/07)	Would allow victims of domestic violence requesting CalWORKs Homeless Assistance to provide a sworn statement in lieu of third-party documentation to verify that homelessness is directly related to domestic violence.	Assembly Appropriations
AB 340	Hancock	Support (State Update: 3/23/07)	Would establish the Unified Resources Families Assessment Pilot Project in five volunteer counties selected by the California Department of Social Services (CDSS). The pilot project would merge multiple, duplicative processes for licensing and approving relatives, foster families and adoptive parents who care for abused and neglected children.	Assembly Appropriations
AB 596	Dymally	Oppose (State Update: 3/21/07)	Would amend the provisions of the 1937 County Retirement Law to classify physicians working in a county jail or county mental health facility, in Alameda or Los Angeles Counties, as safety members without the need for county board of supervisors' action.	Assembly Public Employees, Retirement and Social Security
AB 644	Dymally	Oppose (State Update: 3/21/07)	Would amend the Labor Code to require that physicians performing utilization review of the medical treatment on a workers' compensation case have an "intimate knowledge" of the issues presented for review. Further, it would require the reviewing physician to look at the treatment requested by the treating physician and not the specialty of practice.	Assembly Insurance
AB 713	Maze, Bass	County-sponsored	Would provide enhanced services and financial support to assist youth between the ages of 18 and 21 years to successfully emancipate from foster care. This is a two-year bill.	Assembly Desk
AB 714	Maze, Bass	County-sponsored	Would allow disclosure of birth family records for previously adopted children who return to foster care.	Assembly Appropriations
AB 1062	Ma	County-sponsored	Would enhance the CalWORKs Homeless and Housing Assistance Program by creating a time-limited rental subsidy for certain qualified CalWORKs families.	Assembly Human Services
AB 1073	Nava	Oppose (State Update: 3/21/07)	Would amend the Labor Code to expand the number of chiropractic, occupational therapy and physical therapy treatment sessions available to workers for industrial injuries. It would also limit the reviews of treatment utilization to physicians licensed in California.	Assembly Insurance

<u>BILL</u>	<u>AUTHOR</u>	<u>POSITION</u>	<u>SUBJECT</u>	<u>STATUS</u>
AB 1207	Smyth	Oppose (Board Action: 4/10/07)	Would: 1) require the California Integrated Waste Management Board (CIWMB) to develop regulations for the land application of biosolids by July 1, 2009; 2) require the standards to be uniform statewide; 3) prohibit a local governmental entity from enacting any ordinance or regulation that is contrary or inconsistent to the CIWMB's regulations on the land application of biosolids; and 4) void any existing or future local ordinance or regulation that contradicts the CIWMB's regulations regarding the composting and disposal of biosolids.	Assembly Environmental Safety and Toxic Materials
AB 1391	Brownley	County-sponsored	Would: 1) amend the Water Code to include a requirement that the local public health officer be immediately notified in the event of a sewage spill; 2) permit civil fines to be imposed on persons who do not immediately notify the local public health officer when a sewage spill occurs; and 3) require that at least one of the Water Board's seven membership categories include someone with a public health background.	Senate Appropriations
SB 119	Cedillo	Support (State Update: 2/8/07)	Would increase the scope of benefits and reimbursement rates for Drug Medi-Cal to provide access to an appropriate continuum of care for youths from 12 to 20 years of age suffering from substance abuse disorders.	Senate Public Employment and Retirement
SB 134	Cedillo	County-sponsored	Would lift the retirement cap for those public safety employees of the Sheriff's Department hired prior to April 1997.	Senate Education Suspense File
SB 156	Simitian	Support and Amend as indicated in the summary (Board Action: 3/6/07)	Would enact the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2008 and would place it on the 2008 statewide primary ballot. If approved by the voters, it would authorize the issuance of bonds in the amount of \$4 billion for library construction and renovation. The County is requesting that the bill be amended to: 1) include a deadline for awarding bond funds; 2) develop a streamlined and shorter application process; 3) consider per capita or geographical distribution as a factor in determining awards; 4) allow agencies up to one year to conduct an election if required to obtain matching funds through a local bond measure; and 5) require recipients to take immediate responsibility for project construction and demonstrate that funds are available to operate new facility.	Senate Governmental Organization
SB 297	Romero	County-sponsored	Would authorize counties to impose a local tax of not more than five percent on the sale of alcoholic beverages in order to continue to provide essential public services, including emergency and trauma care.	Senate Governmental Organization

<u>BILL</u>	<u>AUTHOR</u>	<u>POSITION</u>	<u>SUBJECT</u>	<u>STATUS</u>
SB 352	Padilla	Oppose (State Update: 3/21/07)	Would amend the Labor Code to eliminate current restrictions on chiropractic, occupational therapy and physical therapy visits by law enforcement employees recovering from work related injuries.	Senate Appropriations
SB 767	Ridley-Thomas	County-sponsored	Would provide protection from civil and criminal liability for any persons who administer opioid antagonists, in good faith, to someone who is believed to be experiencing a drug overdose, and it also would release licensed health care professionals from civil and criminal liability when, if acting with reasonable care, they prescribe, dispense, distribute, or administer an opioid antagonist.	Senate Judiciary
SB 856	Runner	County-sponsored	Would allow local government agencies to install customized street name signs that better portray the city/community.	Senate Transportation and Housing
SB 893	Cox	Oppose (Board Action: 4/10/07)	Would shift all voter-approved ballot initiative Proposition 10 revenue away from all county First 5 Commissions and direct it to the Statewide California Children and Families Commission to distribute for the purpose of providing health care services to children.	Senate Health
SB 942	Migden	Oppose (State Update: 3/30/07)	Would establish a rebuttable presumption of employer discrimination if an employee, disabled by an employment related injury or illness, is not reinstated to his or her regular position within one day of release by the treating physician. Further, it would be a misdemeanor for the employer to refuse to reinstate the employee within the one day period.	Senate Labor and Industrial Relations
SB 959	Romero	County-sponsored	Would authorize a board of supervisors to permit the Sheriff and the Chief Probation Officer to mandate an electronic monitoring sentence, while also keeping the voluntary provision in place.	Senate Public Safety
SB 990	Kuehl	Support (Board Action: 4/10/07)	Would require as a condition for any sale, lease, or sublease, or transfer of any land presently or formerly occupied by the Santa Susana Field Laboratory, also known as Rockeidyne, that the Director of Toxic Substances Control certify that the land has undergone complete remediation of chemical and radioactive contamination. The bill would require complete remediation to meet the most protective clean-up standards that have been promulgated by the U.S. Environmental Protection Agency for sites that contain chemical and radioactive contamination and that are based on the most restrictive potential land use for these sites to ensure the health, safety, and welfare of any future occupants.	Senate Environmental Quality